IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

Second Appeal No.681 of 2006

(Rambhau s/o Dewaji Fulbandhe v. Nanaji s/o Bapuji Waseguniwar, through next friend Sau. Baby @ Pushpa Nanaji Waseguniwar)

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Office Notes, Memoranda of Coram, appearances, Court's orders or directions : Court's or Judge's orders and Registrar's orders.

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Shri V.N. Morande, Advocate for Appellant.
Shri S.W. Ghate, Advocate for Respondent.

CORAM : R.C. Chavan, J.
DATE : 3rd December, 2007

1. The appellant/original defendant seeks to assail the judgments of the Courts below, first, on the ground that party in whose name the suit had been filed, namely, Nanaji Bapuji Waseguniwar was in fact of a sound mind, but was shown of an unsound mind and the suit was filed through his wife as the next friend.

2. The learned Advocate for the appellant/original defendant submits that since the appellant/original defendant had denied the contention that Nanaji was not of sound mind, issue ought to have been framed and soundness of his mind should have been properly adjudicated upon. It is not necessary to deal with this submission, because of the next submission made the learned Advocate for the appellant.

2. The learned Advocate for the appellant submits that the respondent/original plaintiff's next friend claimed that the plaintiff's whereabouts were not known for about ten years and, therefore, he should have been presumed to have died and, therefore, the suit should have abated. If a lunatic has run away from the house, it will be difficult for any

Court to decide upon his lunacy in an objective manner and by subjecting him to any medical examination and the only course open to it, is to rely on the evidence of his relations about the state of mental condition of the lunatic. There will be no question of presuming him to be dead since such a question was not at all raised in the suit.

3. The last submission of the learned Advocate for the appellant is that the Courts below were not justified in applying the doctrine of lis pendens, since the lis is not registered under Section 18 of the Indian Registration Act. This is not the requirement outside the presidency town and, therefore, even in the absence of registration, the Courts would be justified in applying doctrine of lis pendens.

4. The appeal does not give rise to any question of law, muchless substantial question of law, and is, therefore, dismissed.

JUDGE

pdl